1945

File No. B. Agricultural Debtors 145

Legal Department

K BRANCH

Subject:— A Bill to amend the Bombay agricultural Debtors Relief Act 1931

Bom. VIII 4 1945

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File No. B Agricultural Debtors/145

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18)	U.R. to R.D. No. 33-Confl. dt. 21.1.46.	Amendment of Lists I and II in the Seventh Schedule to the G of I. Act 1935.	171.

Office of the P.L:A.

The proposed legislation is expedient.

2. A revised draft Bill and statement are sent herewith.

3. The draft amendments to the rules have not been revised at this stage as some of the proposed amendments are consequential to the present amendments proposed to the Act e.g. that to rule 6 (a) referred to at page 146 or rule 38 referred to at page 151. Please see in this connection portion marked X in A(R)'s note at pages 60 and that marked A at page 62. The draft Bill is yet to be approved by a Committee and then by Government and finally enacted into law. The amendments to the rules can therefore be examined more appropriately after the Bill is enacted into an Act.

4. Clause 2:- The amendment in section 2(4) (a) proposed in the P.D. draft Bill is not suitable. It is necessary to provide in view of new section 9 that "Court" means in sections 17,61,62(1) (Where the word occurs for the first time) and 63 the District Court to which an appeal lies and that it means in sections 13, 14, 62(1) (where the word occurs for the second time) 66,75 and 83 a District Court or the Court of the Assistant Judge or the Court of the First Class Subordinate Judge actually hearing the appeal against the award. Clause 2(1) in the revised draft provides accordingly.

Section 4(1) provides for the establishment of a Board for any local area or for any class of debtors in any local area. It is necessary therefore to specify both kinds of Boards. Clause 2(ii) of the revised draft Bill provides accordingly by referring to the "Board concerned".

Similar amendment has been made in Explanation II to section 2(6).

5. Secretary, P.D. has taken up the point in para. 9 of his note at pages 54-55 that the amended time limits should be given effect to in the areas where the existing Act is being worked and the P.L.A. is requested to advise whether dissolution of the existing Boards under section 5(1)

after the amendment of the Act and appointing new Boards in their places would automatically bring all debts incurred till the date of the establishment of the new Board within the purview of the Act and whether fresh applications under section 17 in respect of debts incurred during the period intervening between the existing time limit and the modified time limit will be admissible ~~xxxx~~ within six months of the establishment of the new Boards. Please see in this connection para. 2(1) of A(R)'s note at page 56, particularly the portion marked B&B that it is necessary to include for the remaining areas debts incurred up to the time of establishing a Board in the area concerned. It is presumed that the suggestion made by Secretary, R.D. is not approved by Government. Government's decision seems consistent with section 32 which does not permit revival of claims in respect of discharged debts. Secretary, R.D.'s proposal would seem to revive all such debts, not to say reopen all settled debts. See section 5(2) and (3) of the Act. The draft Bill therefore provides for the amendments effected as regards the debts etc. in sections 2(6)(a)(iii), (b)(iii), and Explanation II, 3 (iv), 17(1), 25,35,36,38 and 52 to have operation only in relation to the Boards that will be established after the amending Act is enacted. As regards the Boards already established the date "1st January 1939" will continue under the various sections as also the period of 18 months mentioned in section 17 (1).

6. Clause 4:- Please see A (P)'s note in the margin at page 146. There is no objection to prescribing by rules the period for which a legal practitioner should practise before he is eligible to be appointed as a Board. Clause 4 and clause 32(1) provide for this.

7. Clause 9:- Please see in this connection Secretary, R.D.'s note on suggestion 8 and A(R)'s remarks thereon at page 146. No amendment of section 24 appears necessary. The amendment made in section 23(4) in clause 9 and in section 61(1) in clause 23 will secure the objects in view. The settlement recorded

under - sub-section (4) of section 23, as proposed to be amended, will under the amendment be liable to the payment of a court fee of Rs. 1/- before it is transmitted to the court under section 61. If under sub-section (5) the Board finds that there are other debts, it proceeds as if an application for adjustment of debts is made to it under section 17 and in due course makes an award under section 54 and the payment of court fees will be adjusted while making the award under section 54(2)(m).

8. Clause 11:- Please see in this connection Secretary, R.D.'s note on suggestion 10 and A(B)'s remarks thereon page 147. It is true that section 7 of the Act provides that the Board shall have the same powers as are vested in civil courts under the code of Civil Procedure and that under Order 23 in Schedule I to the Code of Civil Procedure there is no provision for giving notice to the other party when a suit is allowed to be withdrawn. But section 7(1) is expressly made subject to the provisions of the Act and rules. Rules can therefore be made under section 83(2)(b) for regulating the procedure in proceedings before the Board under section 7 and providing that in such cases notice to the creditor may issue. No amendment of the Act is therefore necessary.

9. Clause 12:- Sub-clause(11) also corrects an obvious error in the proviso to sub-section (2) of section 35.

10. Clause 14:- Please see Secretary, R.D.'s note on suggestion 11 and A(B)'s remarks on page 148, Clause 14 inserts an entirely new section 37. Sub-clause (1) provides that all pending suits, applications for execution and proceedings for recovery of any debt against a person in any civil or revenue court involving the questions whether such persons is a 'debtor' and whether the debts due from him on the date of the establishments of the Board do not exceed Rs. 15,000, shall be transferred to the Board. Sub-clause (2) provides that when an application for adjust-

adjustment of debts under section 17 or a statement submitt
under section 31 includes a debts in respect of which a suit
etc. is pending before a civil or revenue court, the Board
shall give notice thereof to such court in the prescribed
manner. On the receipt of such notice, the court shall transfer
the suit etc. to the Board. See also in this connection the existing
section 73(1) of the Act. Then sub-clause (3) provides that when
any such suit etc. is transferred to a Board, it shall proceed
as if an application under section 17 had been made to it.
Sub-clause (4) provides that if the Board decides the
preliminary issues mentioned in sub-section (1) of section
35 (namely, whether the person is a debtor within the
meaning of the Act and whether his total debts do not
exceed Rs. 15,000) in the negative, it shall retransfer the
suit etc. to the court, after the disposal of the appeal,
if any is filled, or if no appeal is filled after the expiry
of the period therefore,. Lastly, subclause (5) provides
that when any suit application or proceeding is retransferred
to the court under sub-clause (4) , it shall proceed with the
same and the Board shall have no further jurisdiction in
respect thereof . It is hoped that this also meets the point
raised in the linked R.D. file No. 9402/39 and will
H. 6795(a),
avoid all difficulties which have been experienced so far in
the matter of pending suits, etc.

11. Clause18:- Please see Secretary, R.D.'s note on
suggestion 11(a) at pages 148-149. The position seems to be
correctly represented in the R.D. office note at page 91. The
allocation of Government and local authority debts on the
one hand and the other section 3 debts on the other hand
to the properties of the debtor bearing liability of secured
debts and to properties of the debtor not bearing such
liability as provided for in clauses (2) and (3) of section
50 does not appear to proceed from any considerations of the
priority of debts as set forth in section 54(2) (g). Section
3 debts include clauses (5) and (6) of the proviso to section
54(2)(g) and when these are deducted under section 50 (6) in

in preference to secured debts appearing in clause (4) of the proviso to section 54(2)(g) the consideration is more with regard to scaling down than to priority of payment. Thus debts appearing in clause (5) and (6) are completely excluded under section 50 and do not get scaled down. But secured debts appearing in clause (4) are not so excluded and do to some extent get scaled down under section 52. It is, therefore, plain that the deductions under section 50 should not be mixed up with the priorities of section 54; but should be related to section 3 exclusively. If this is done, there is not much point in allocating the deductions to one category of debtor's property or another. It is enough if section 50 provided that all section 3 debts should first be deducted from the value of the debtors total property whether that property is all subjected to the liability of secured debts or not so subjected or in part so subjected. Revised clause 18 provides accordingly.

12. Clause 22:- The amendment of sub-section (1) of section 55 is adopted on the lines of the Secretary, P.D.'s suggestion in para. 7 of his note in the linked P.D. file No. ~~suggestion in para. 7 of his note in the linked R.I. file No.~~ 9402/39. Sub-section (2) of section 55 is revised as proposed in R.D. office note approved by Government. 6503

See 'A' on page 158.

13. Please see Secretary, P.D.'s note on suggestion 21 at page 161 and A(E)'s note thereon marked K. . Please see also P.D. note marked Z at page 123. The view taken by Secretary P.D. that no amendment is necessary in section 61(1) is correct. If the debtor is liable for the payment of the court fee, and delays payment thereof, it is in the interest of the creditor to pay the court fee and set the award in motion by having it transmitted to the Court. There is no question of forcing the creditor to pay, for under sub-section (2) of section 61 the amount so paid is added by the Board to the amount payable by the debtor under the award.

14. Clause 24:- Please see Secretary, P.D.'s note on

and A(R)'s remarks thereon marked L. It is presumed that pending consideration by A(R) the amendment proposed by Secretary. P.D. in section 63 is to be made and this has done in clause 24. Since recovery is not to be effected as for arrears of land revenue save where section 55(3) applies, execution by the Collector is presumed to be on the lines of section 69to 72 of the Civil Procedure Code read with the Third Schedule thereto.

15. Please see Secretary, R.D.'s note on suggestion 83 at page 181 and A (R)'s remarks thereon marked M. There is no objection to issue executive instructions as proposed by Secretary P.D.

16. Clause 26(1) makes a consequential amendment in section 66 substituting "the court hearing an appeal", for "the court before which an appeal lies" as under new section 8 an appeal lies to the District Court which may however transfer it for hearing to an Assistant Judge or a First Class Sub-Judge.

17. Clause 27:- Clause 27 of the Bill amends section 67 as required in these papers as also in the linked papers in P.D. file No. 9402/39 6503 at A on page 9. The amended provision will not release the writing of authorisation from liability to stamp duty as power of attorney in view of section 2(21) of the Stamp Act, 1899, read with article 48 in the First Schedule thereto. The necessary remission of stamp duty will have to be ordered under section 9 of the Stamp Act separately.

18. Clause 28:-Please see Secretary, R.D.'s note on suggestion 13 at pages 150-151 and A (R)'s remarks on page 151. Section 68 opens with the words "If at any stage of the proceedings under chapter 3 and it is would include execution proceedings under section 63. Section 68 therefore contemplates a situation where although the paying capacity of the debtor was adequate at the time of the award the debtor frittors away his assets with the result that the paying capacity subsequently becomes inadequate. In such case the debtor's inability to

liquidate his debts by the stated number of annual instalments would, of course, include the case of the debtor's paying capacity being inadequate to pay his total debts. The view taken by A (R) in the margin on page 151 is correct. Clause 28(1) of the revised draft deletes the portion that is redundant in section 68(1).

19. Please see para. 3 of A (R)'s note at page 57 and the portion marked H in para, 8 of R.D. note at page 40, and Secretary, R.D.'s remarks thereon. The necessary provisions from the Bill published on 11th April 1942 at pages 166-169 have been embodied in the revised draft Bill .

20. Please see sections 84 and 85 which provide for the repeal of the "mall Holders Relief Act, 1938 and the Deccan Agriculturists Relief Act, 1879, on the date on which the Board ds established under section 4 for any local area. Under section 4(1) Board may be established for a local area or for a class of debtors in a local area. It is for consideration therefore whether the wording of sections 84 and 85 which is inconsistent with the provision made in section 4(1) for the establishment of two kinds of Boards, one for the local area and another for any class of debtors in any local area, may be harmonised with that of section (4)(1). It is understood from R.D. that so far no Board has been established for any class of debtors in any local area.

21. Government in R.D. have not considered what provisions should be inserted on the lines of sections 84 to 86 of the Act with respect to proceddings pending before the Boards or the courts of apieal. It is not clear whether in the appeal proceedings Government wish the awards to be reopened with a view to the debts being scaled down to the new 60 per cent. limit instead of the old 80 per cent. adopted in the awards. It is also not clear whether in cases which have not reached the stage of the award the Board should reopen proceedings with a view to scaling down debts to 60 per cent. The same remarks would apply to all other procedural provisions such as the amended

section 55. Provision will also be necessary for the transfer of pendinding execution proceedings from the relevant courts to the Collector under revised section 63. Provision is likewise necessary for the transfer of pending appeals from the first Class Subordinate Judges to the District Courts in view of revised sections 9 and 15. R.D. is therefore requested to settle all such transitional provisions and indicate which the amendments should effect pending proceedings and which should not. A section will thereafter be drafted to give effect to R.D.'s intentions.

22. The subject-matter of the Bill falls under entries 1,2,21,27,32, and 54 in List II and entries 4,5, 8,10, 12 and 15 in List III in the Seventh Schedule to the Government of India Act 1935. The provisions in the Bill relating to the further scaling down of the debts and settlement thereof are generally repugnant to the Con contract Act. The reduction of the instalments from 25 to 12 with reference to which the question of insolvency would be decided under section 68 as amended is repugnant to t the law of insolvency. Section 65 as amended by clause 25 of the Bill extends the ban on alienations of property and is repugnant to the Transfer kof proerty Act. The Bill is therefore repugnant to the Transfer of Property Act, the Contract Act and the Provincial Insolvency Act which are existing Indian Laws relating to entri s 8,10 and 12 of the Concurrent Legislative List. It is therefore necessary to reserve the Bill for the consideration of the Governor-General with referrnce to section 107(2) of the Government of India Act, 1935, and paragraph 2 of the Prolcamation. The Bill also requires the previous concurrence from the Governor General under Executive Instructions".

Id/- P.N.H. 30/6/1944.

Remembrancer of Legal Affairs.

UF.to F.D. No. 4642 dated 1st July 1944.

NW. D.
12/7
4c.

IMMEDIATE.

No. 2570.
Legal Department,
Bombay Castle, 3rd April 1945.

From,

P.N. Moos, Esquire, Bar-at-Law, I.C.S.,
Secretary to the Government of Bombay:

To,

The Secretary to the Governor of Bombay.

Subject:- A Bill to amend the Bombay Agricultural Debtors Relief Act, 1939.

Sir,

With reference to your memorandum No. 201(54), dated the 27th January 1945, addressed to the Revenue Department, on the above subject, I am directed to send herewith a copy of the Bill to amend the Bombay Agricultural Debtors Relief Act, 1939, prepared by His Excellency the Governor under paragraph (2) of the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935, and to request you to forward the same to the Secretary to the Governor General (Public) for obtaining the assent of His Excellency the Governor General.

2. The subject-matter of the Bill falls under entries 1,2,21,27, 32 and 54 in List II and entries 4,5,8,10,12 and 15 in List III in the Seventh Schedule to the Government of India Act, 1935. The provisions in the Bill relating to the further scaling down of the debts and settlement thereof are generally repugnant to the Contract Act. The reduction of the instalments from 25 to 12 with reference to which the question of-- insolvency would be decided under section 68 as amended is repugnant to the law of insolvency, section 65 as amended by clause 28 of the Bill extends the ban on alienations of property and is repugnant to the Transfer of Property Act. The Bill is therefore repugnant to the Transfer of Property Act. ~~The Bill is therefore repugnant to the Transfer on Property Act.~~ the Contract

Act and the Provincial Insolvency Act which are existing Indian Laws relating to entries 8, 10 and 12 of the Concurrent Legislative List. It is therefore necessary to reserve the Bill for the consideration of the Governor General with reference to section 107 (2) of the Government of India Act, 1935, and paragraph (2) of the Proclamati

3. I also forward herewith six spare copies of the Bill out of which five copies are for transmission to the Secretary to the Governor General (Public).

4. I am also directed to forward for your information extracts of paragraphs 5 and 6 of the Revenue Department notes dated the 15th March 1945 and to request that for the reasons stated therein His Excellency the Governor General may be moved to give his assent to the Bill before 15th April 1945 and to convey the assent by telegrams if necessary, so as to enable this Government to publish the assent before that date.

Your Obedient Servant,

Sd/- P.N.K.
3/4-45.

Secretary to the Government of Bombay,
Legal Department.

Through:

The Secretary to the Government of Bombay,
Revenue Department.

N.V.D.
12/7
4c.

Acts.
Publication of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 3126,
Bombay Castle, 21st April 1945.

Letter to the Secretary to the Governor , No, 2570, dated the 3rd April 1945.

Memorandum from the Secretary to the Governor, No. 201(54) dated the 20th April 1945 informing that the Governor General assented to the Bombay Agricultural Debtors Relief (Amendment) Bill, 1945, on the 19th April 1945.

RESOLUTION: The Law should be published as Bombay , Act. No. VIII of 1945, in the Bombay Government Gazette dated the 21st April 1945.

2. The act should be translated into Marathi, Gujarati Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act shoul be forwarded to the Revenue Department.

By prder of the Governor of Bombay
Sd/-K.M. Chitnivis.
For,
Secretary to Government.

To,
The Manager, Government Central Press, Bombay,
(With a copy of the Act and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Department). etc.

N.V.D.
12/7
4c.

CONFIDENTIAL.

No. 23 of 1945.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 30th June 1945.

U. R. to the Advocate General, Bombay, No. ~~Ext~~ 232 -Clnfl. dated the 19th May 1945.

Subject:- Bombay Agticultural Debtors Relief Act.

O P I N I O N .

I am ~~in argument~~ agreement with the opinion given by the Remembrancer of Legal Affairs. The Act of 45 is on the Statute Book now, and Boards have presumeably been constituted under it, and are functioning. Probably some have already determined some matters and there will be even more confusion if there is any attemit to interfere directly as pointed out by the Remembrancer of Legal Affairs.

I agree that the Ordinance does not save the provisions of the amending Act But I am in favour of retaining things remain as they are at present at least until the result of the appeal to the Privy Council is known leaving it to any particular person to challenge the validity of any specific provision of the amending Act.

Sd/-

Advocate General.

N.V.D.
12/7
4c.

Office of the R.L.A.

The R.L.A. agrees with the course proposed to be adopted by the Government of India viz. legislation to amend Lists I and II in the Seventh Schedule to the Government of India Act, 1935.

2. The Government of India may also be asked to consider the desirability of amending entry 38 in List I to exclude banking as regards deb' relief and the regulation of money lending since non-Scheduled banks would be hit by the Bombay Agricultural Debtors Relief Act, 1939 as regards their money lending operations

3. We should press for the ~~entires~~ entries concerned to be amended with retrospective effect. The view of Secretary, R:D. in the marginal note on page 146 is not correct, since the Ordinance No. XI of 1945 (see section 2 of the Ordinance) does not validate the large scale amendments made in the Bombay Agricultural Debtors Relief Act, 1939, by the Bombay Act VIII of 1945.

Sd/- P.N.M. 19/1/46.

Remembrancer of Legal Affairs.

U.P. to P.D., No. 33-Confl. dated the 21st January 1946.

N.V.D.
12/7
4c.

Bom. Act

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~~GOVERNOR'S BILL~~ No. VII OF 1945.

A Bill to amend the Bombay Agricultural Debtors Relief Act, 1939.

Bom. XXVIII of 1939.

WHEREAS it is expedient to amend the Bombay Agricultural Debtors Relief Act, 1939, for the purposes hereinafter appearing;

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935, all powers vested by or under the said Act in the Provincial Legislature;

26 Geo. 5, Ch. 2.

NOW, THEREFORE, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act :—

Short title.

1. This Act may be called the Bombay Agricultural Debtors Relief (Amendment) Act, 1945.

Amendment of section 2 of Bom. XXVIII of 1939.

2. In section 2 of the Bombay Agricultural Debtors Relief Act, 1939, hereinafter called the said Act—

Bom. XXVIII of 1939.

(*i*) in clause (*4*) for sub-clause (*a*) the following shall be substituted, namely :—

"(*a*) in sections 17, 61 and 63 and where the word 'Court' occurs for the first time in sub-section (*1*) of section 62, the District Court to which an appeal lies against the award of a Board under section 9;

(*aa*) in sections 13, 14, 66, 67-A, 75 and 83, and where the word 'Court' occurs for the second time in sub-section (*1*) of section 62, a District Court, a Court of the Assistant Judge or a Court of the First Class Subordinate Judge, as the case may be, hearing an appeal against the award of a Board under section 9;";

(*ii*) in clause (*6*)—

(*a*) to sub-clause (*a*) (*iii*) the following proviso shall be added, namely :—

"Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, paragraph (*iii*) of sub-clause (*a*) shall be construed as if for the words, figures and letters 'from a date prior to 1st April 1937' the words 'for the two cultivating seasons immediately preceding the date of establishment of the Board concerned' were substituted;"

Bom. of 1945.

(*b*) to sub-clause (*a*) the following proviso and *Explanation* shall be added, namely :—

"Provided that a person who is temporarily engaged in one of the Defence Services shall be deemed to have been personally cultivating land used for agricultural purposes as required by this sub-clause, if he had been cultivating such land personally at the commencement of the first of the two cultivating seasons immediately preceding the date of the establishment of the Board concerned or the date of joining the Defence Service whichever may be earlier.

Explanation.—For the purposes of this sub-clause the income from salary of a person temporarily engaged in one of the Defence Services shall be excluded in computing his income from sources other than agriculture and manual labour."

(*c*) to sub-clause (*b*) (*iii*) the following proviso shall be added, namely :—

"Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, paragraph (*iii*) of sub-clause (*b*) shall be construed as if for the words, figures and letters 'from a date prior to 1st April 1937' the words 'for the two cultivating seasons immediately preceding the date of establi h-ment of the Board concerned' were substituted ;" Bom. of 1945.

(*d*) to *Explanation II* the following proviso shall be added, namely :—

"Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, *Explanation II* shall be construed as if for the words, figures and letters 'on 1st April 1937' the words 'at the commencement of the first of the two cultivating seasons immediately preceding the date of establishment of the Board concerned' were substituted." Bom. of 1945.

(*iii*) after clause (*8*), the following shall be inserted, namely :—

"(*8-A*) 'Person' includes an undivided Hindu family ;" ; and

(*iv*) after clause (*11*), the following shall be inserted, namely :—

"(*11-A*) 'Scheduled bank' means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934". II of 1934.

Amendment of section 3 of Bom. XXVIII of 1939.

3. In section 3 of the said Act,—

(*i*) for the figures "54" the figures "55" shall be substituted ;

(*ii*) in clause (*iv*), the word "and" shall be deleted, and to clause (*iv*), the following proviso shall be added, namely :—

"Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, this clause shall be construed as if for the figures, letters and word '1st January 1939' the words 'the date of establishment of the Board concerned' were substituted," ; Bom. of 1945.

(*iii*) after clause (*v*), the following shall be inserted, namely :—

"and

(*vi*) any liability in respect of any sum due to any scheduled bank."

4. To clause (*i*) (*a*) of sub-section (*3*) of section 4 of the said Act, the following shall be added, namely :— Amendment of section 4 of Bom. XXVIII of 1939.

"who has been practising as a legal practitioner for such period as may be prescribed, or ".

5. For section 9 of the said Act, the following shall be substituted, namely :— Amendment of section 9 of Bom. XXVIII of 1939.

"9. (*1*) Every award except an award made in terms of a settlement under sub-section (*4*) of section 23 or under section 24 or under section 55 and every decision of the Board under sub-section (*3*) of section 23 or dismissing an application under sub-section (*2*) of section 35 shall, at the instance of any party, be subject to appeal to the District Court within the local limits of whose jurisdiction the Board may have been established. Appeal to Courts.

(*2*) The District Judge may transfer any such appeal to any Assistant Judge subordinate to him, who has been empowered to hear appeals under section 17 of the Bombay Civil Courts Act, 1869, or to a Subordinate Judge of the First Class in the district who has been invested with power to hear appeals under section 27 of the Bombay Civil Courts Act, 1869."

XIV of 1869.

XIV of 1869.

6. In section 15 of the said Act— Amendment of section 15 of Bom. XXVIII of 1939.

(*i*) in sub-section (*1*) for the words "Court of the First Class Subordinate Judge" the words "District Court" shall be substituted, and the word "special" shall be deleted; and

(*ii*) in sub-section (*2*) for the words "First Class Subordinate" the word "District" shall be substituted.

7. At the end of section 16 of the said Act, the following proviso shall be inserted, namely :— Amendment of section 16 of Bom. XXVIII of 1939.

"Provided that the period for doing one single act, either at one time or at different times, shall not be enlarged by more than 30 days."

8. To sub-section (*1*) of section 17 of the said Act, the following proviso shall be added, namely :— Amendment of section 17 of Bom. XXVIII of 1939.

"Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, this sub-section shall be construed as if for the word 'eighteen' the word 'six' were substituted."

Bom. of 1945.

9. In sub-section (*4*) of section 23 of the said Act, for the words and figures "the Board shall make an award under section 54 in terms of the settlement" the words and figures "and the Board is satisfied that the settlement Amendment of section 23 of Bom. XXVIII of 1939.

has been made by the debtor voluntarily and is for his benefit, the Board shall make an award in terms of such settlement. The court-fee payable on such award shall be Re. 1 and shall be payable on it before it is transmitted to the Court under section 61." shall be substituted.

Amendment of section 26 of Bom. XXVIII of 1939.

10. To section 26 of the said Act, the following proviso shall be added, namely :—

"Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, this section shall be construed as if for the figures, letters and word '1st January 1939' the words 'the date of establishment of the Board concerned' were substituted." Bom. 1945.

Amendment of section 30 of Bom. XXVIII of 1939.

11. In section 30 of the said Act, for the words "are brought on the record" the words "are as soon as may be brought on the record" shall be substituted.

Amendment of section 32 of Bom. XXVIII of 1939.

12. In sub-section (*1*) of section 32 of the said Act—

(*i*) after the word and figures "section 27" the following shall be inserted, namely :—

"and no fresh application is made under section 17" ; and

(*ii*) the words and figures "unless the Board is satisfied that for good and sufficient cause the creditor did not make an application under section 17 or was unable to comply with the provisions of section 31" shall be deleted.

Amendment of section 35 of Bom. XXVIII of 1939.

13. In section 35 of the said Act—

(*i*) in the proviso to sub-section (*2*) for the words "from them", the words "from such person" shall be substituted.

(*ii*) the following proviso shall be added at the end of the section, namely :—

"Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, this section shall be construed as if for the figures, letters and word '1st January 1939' wherever they occur the words 'the date of establishment of the Board concerned' were substituted." Bom. 1945. of

Amendment of section 36 of Bom. XXVIII of 1939.

14. To section 36 of the said Act, the following proviso shall be added, namely :—

"Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, this section shall be construed as if for the figures, letters and word '1st January Bom. 1945.

1939' the words 'the date of establishment of the Board concerned' were substituted."

15. For section 37 of the said Act, the following shall be substituted, namely :— Amendment of section 37 of Bom. XXVIII of 1939.

"37. (*1*) All suits, applications for execution and proceedings for the recovery of any debt against a person pending at any time in any civil or revenue court shall, if they involve the questions whether such person is a debtor under this Act and whether the total amount of debts due from him on the relevant date does not exceed Rs. 15,000, be transferred to the Board to which an application for adjustment of the debts of such person under section 17 lies. Transfer of pending suits, applications and proceedings to the Board.

Explanation.—In this sub-section, the relevant date' means the 1st January 1939 in relation to Boards established before the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, comes into force, and the date of establishment of the Board concerned in relation to other Boards. Bom. of 1945.

(*2*) When an application for adjustment of debts made to a Board under section 17 or a statement submitted to a Board under section 31 includes a debt in respect of which a suit, application for execution or proceeding is pending before a civil or revenue court, the Board shall give notice thereof to such court in the prescribed manner. On the receipt of such notice, the court shall transfer the suit, application or proceeding, as the case may be, to the Board.

(*3*) When any suit, application or proceeding is transferred to the Board under sub-section (*1*) or sub-section (*2*), the Board shall proceed as if an application under section 17 had been made to it.

(*4*) If the Board, to which any suit, application or proceeding is transferred under sub-section (*1*) or sub-section (*2*), decides the preliminary issues mentioned in sub-section (*1*) of section 35 in the negative, it shall retransfer the suit, application or proceeding to the court from which it had been transferred to the Board, after the disposal and subject to the result of the appeal where an appeal is filed, and after the expiry of the period prescribed in section 10 for an appeal where no appeal is filed.

(*5*) When any suit, application or proceeding is retransferred to the court under sub-section (*4*), the court shall proceed with the same and the Board shall have no further jurisdiction in respect thereof."

16. To section 38 of the said Act, the following proviso shall be added, namely :— Amendment of section 38 of Bom. XXVIII of 1939.

"Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors

Relief (Amendment) Act, 1945, this section shall be construed as if for the figures, letters and word '1st January 1939' the words 'the date of establishment of the Board concerned' were substituted." Bom. of 1945.

Amendment of section 41 of Bom. XXVIII of 1939.

17. In section 41 of the said Act, after the word "debtor" the words and figures "during the course of an inquiry under section 40" shall be inserted.

Amendment of section 42 of Bom. XXVIII of 1939.

18. In clause (*e*) (*i*) of sub-section (*2*) of section 42 of the said Act, after the words "had commenced" the words "on or" shall be inserted.

Amendment of section 46 of Bom. XXVIII of 1939.

19. To sub-section (*1*) of section 46 of the said Act, the following proviso shall be added, namely :—

"Provided that if such decree or order does not specify the amount of principal and interest separately or does not contain any material for determining the same two-thirds and one-third of the amount awarded by such decree or order shall for purposes of this section be deemed to be the amount awarded on account of principal and interest respectively."

Amendment of section 47 of Bom. XXVIII of 1939.

20. In section 47 of the said Act—

(*i*) in sub-section (*2*), for the words "co-operative society or any local authority" the words "local authority, co-operative society or scheduled bank" shall be substituted ;

(*ii*) in sub-section (*3*), for the words "the co-operative society or the local authority" the words "the local authority, the co-operative society or the scheduled bank" shall be substituted ;

(*iii*) in sub-section (*4*)—

(*a*) for the words "The Collector and the co-operative society" the words "The Collector, the co-operative society and the scheduled bank" shall be substituted ; and

(*b*) for the words "the Provincial Government or the co-operative society" the words "the Provincial Government, the co-operative society or the scheduled bank" shall be substituted ; and

(*iv*) in sub-section (*5*), for the words "the Provincial Government or the co-operative society" the words "the Provincial Government, the co-operative society or the scheduled bank" shall be substituted.

Amendment of section 50 of Bom. XXVIII of 1939.

21. In section 50 of the said Act, for sub-sections (*2*) and (*3*) the following shall be substituted, namely :—

"(*2*) In determining the value of the property or assets of a debtor, the amount of the debts mentioned in section 3 shall be deducted."

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22. In section 51 of the said Act, for the figures "80" and the word "eighty" wherever they occur the word "sixty" shall be substituted. Amendment of section 51 of Bom. XXVIII of 1939.

23. In section 52 of the said Act— Amendment of section 52 of Bom. XXVIII of 1939.

(*1*) to sub-section (*1*) the following proviso shall be added, namely :—

"Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, this sub-section shall be construed as if for the words 'at the commencement of this Act' the words 'at the date of establishment of the Board concerned' were substituted ;" Bom. of 1945.

(*2*) in sub-sections (*3*) and (*4*) for the word "eighty" wherever it occurs the word "sixty" shall be substituted.

24. In sub-section (*2*) of section 54 of the said Act— Amendment of section 54 of Bom. XXVIII of 1939.

(*i*) in the first proviso to clause (*h*) for the figures "25" the word "twelve" shall be substituted ;

(*ii*) for the *Explanation* to clause (*h*) the following shall be substituted, namely :—

"*Explanation.*—For the purposes of this clause the net annual income of the debtor shall mean the balance of his annual income after deducting (*i*) such sum as may be considered necessary for the payment of the liability, if any, imposed on the debtor under a decree or order for maintenance passed by a competent Court, (*ii*) such sum as may be considered necessary for the maintenance of the debtor and his dependents, and (*iii*) the sum required by the debtor to pay the assessment and taxes in respect of the current year to Government and to local authorities and to pay off loans borrowed for the purpose of financing crops."

and

(*iii*) the first proviso to clause (*l*) and the word "further" in the second proviso shall be deleted.

25. In section 55 of the said Act,— Amendment of section 55 of Bom. XXVIII of 1939.

(*1*) for sub-sections (*1*) and (*2*) the following shall be substituted, namely :—

"(*1*) Before making the award under sub-section (*1*) of section 54, the Board may intimate to the creditors the amount of debts of the debtor as scaled down by it and the value of the debtor's immoveable property as determined by it and may call upon them to state in writing whether they agree—

(*a*) to the further scaling down of the debts so as to reduce them to a sum not exceeding half the value of the immoveable property of the debtor, and

(*b*) to receive in lieu of all the debts due to them from the debtor bonds issued by the Bombay Provincial Co-operative Land Mortgage Bank, registered under

the Bombay Co-operative Societies Act, 1925, or by such other Bank as may be specified by the Provincial Government by a notification in the Official Gazette, such bonds being guaranteed by the Provincial Government and being equivalent in value to the sum referred to in clause (*a*) of this sub-section. Bom. VII of 1925.

(*2*) If all the creditors agree to such further scaling down of the debts and to receive such bonds, the Board shall prepare a scheme for the adjustment of the debts accordingly and shall send the scheme for acceptance to the Primary Land Mortgage Bank situated in the local area or if there is no such Primary Land Mortgage Bank in that local area, to the Bombay Provincial Co-operative Land Mortgage Bank. If the Primary Land Mortgage Bank or the Bombay Provincial Co-operative Land Mortgage Bank, as the case may be, agrees to accept the scheme, the Board shall make an award in the form prescribed directing that the sum equal to the amount of the bonds shall be charged on all the immoveable property of the debtor and the bonds for the amount referred to in sub-section (*1*) shall be issued to the creditors in full satisfaction of all the debts due to them from the debtor."; and

(*2*) Sub-section (*4*) shall be deleted.

Amendment of section 61 of Bom. XXVIII of 1939.

26. In sub-section (*1*) of section 61 of the said Act, after the word "section" the figures "23," shall be inserted.

Amendment of section 63 of Bom. XXVIII of 1939.

27. In section 63 of the said Act, after the words "it is registered", the following shall be inserted, namely :—

"and execution thereof shall be transferred to the Collector; and thereupon the provisions of sections 69 to 72 of the Code of Civil Procedure, 1908, and of the Third Schedule thereto, save in so far as they are inconsistent with any provisions of this Act, shall as far as may be apply." V of 1908.

Amendment of section 65 of Bom. XXVIII of 1939.

28. For section 65 of the said Act, the following shall be substituted, namely :—

No alienation by the debtor to be binding.

"65. Notwithstanding any law or contract but subject to the provisions of section 66, no alienation made by a debtor, who is a party to any proceedings or award under this Act, of any property belonging to the debtor or included in the award shall be valid except with the previous sanction of the Provincial Government."

Amendment of section 66 of Bom. XXVIII of 1939.

29. In section 66 of the said Act—

(*i*) for the words "before which an appeal lies" the words "hearing an appeal" shall be substituted; and

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(*ii*) after the first proviso the following further proviso shall be inserted, namely :—

"Provided further that the Board or the Court, as the case may be, shall not order the sale of any land to which section 73A of the Bombay Land Revenue Code, 1879, applies without the previous sanction of the Collector."

Bom. V of 1879.

Amendment of section 67 of Bom. XXVIII of 1939.

30. In section 67 of the said Act, for the second proviso the following shall be substituted, namely :—

"Provided further that any party to any proceeding before the Board shall be entitled to appear through an agent other than a pleader, vakil, mukhtyar, advocate or attorney of a High Court, duly authorised in writing, in the case of a co-operative society signed by the chairman or in his absence by the vice-chairman of such society, and in the case of any other party signed before a magistrate, village munsiff or sub-registrar by such party".

Insertion of new section 67A in Bom. XXVIII of 1939.

31. After section 67 of the said Act, the following new section shall be inserted, namely :—

Appearance on behalf of members of Defence Services who cannot appear or appoint an agent on account of war conditions.

"67A. (*1*) If any party to a proceeding before the Board or the Court who, being engaged in one of the Defence Services, cannot on account of war conditions appear or appoint an agent, any person interested in such party may apply to the Collector for the grant of a certificate authorising him to act as the agent of that party for the purposes of that proceeding.

(*2*) If, after making such enquiries as he may consider necessary, the Collector is satisfied that the party to the proceeding before the Board or the Court is engaged in one of the Defence Services and cannot on account of war conditions, appear or appoint an agent and the person applying for the certificate of authority is interested in such party and is otherwise suitable to act on his behalf, the Collector shall require that person to furnish a bond in such form as may be prescribed, and on his furnishing such bond the Collector shall issue a certificate authorising him to act as the agent of that party in the proceeding before the Board or the Court and the Board or the Court as the case may be shall allow such person to appear as the agent of that party."

Amendment of section 68 of Bom. XXVIII of 1939.

32. In section 68 of the said Act—

(*i*) in sub-section (*1*) the words and figures "the Board is satisfied that the paying capacity of the debtor is inadequate to pay the total amount of his debts as scaled down under section 52, or if" shall be deleted, and for the word "twenty-five" the word "twelve" shall be substituted ; and

(*ii*) to sub-section (*3*) the following further proviso shall be added, namely :—

"Provided further that the Board or the Court, as the case may be, shall not order the sale of any land to

which section 73A of the Bombay Land Revenue Code, 1879, applies without the previous sanction of the Collector." Bom. V of 1879.

Amendment of section 69 of Bom. XXVIII of 1939.

33. In section 69 of the said Act, the words "in appeal" shall be deleted.

Insertion of new section 73A in Bom. XXVIII of 1939.

34. After section 73 of the said Act, the following new section shall be inserted, namely :—

Provision as to minors etc.

"73A. The provisions of Order XXXII in the First Schedule to the Code of Civil Procedure, 1908, shall apply to the proceedings under this Act as if such proceedings were proceedings in a suit in a Civil Court." V of 1908.

Amendment of section 77 of Bom. XXVIII of 1939.

35. In sub-section (*1*) of section 77 of the said Act, for the words "party to an award", the following shall be substituted, namely :—

"party to any proceedings or award".

Amendment of section 78 of Bom. XXVIII of 1939.

36. In sub-section (*1*) of section 78 of the said Act, for the words "individual, joint stock company or other association" the word "person" shall be substituted, and after the word "debtors" the following shall be added, namely :—

"who are parties to any proceedings under this Act or".

Amendment of section 83 of Bom. XXVIII of 1939.

37. In sub-section (*2*) of section 83 of the said Act—

(*i*) in clause (*a*) after the figure "4" the following shall be inserted, namely :—

"and the period of practice referred to in sub-section (*3*) (*i*) (*a*)";

(*ii*) after clause (*h*) the following new clause shall be inserted, namely :—

"(*hh*) the manner of giving notice under sub-section (*2*) of section 37;";

(*iii*) after clause (*m*) the following new clause shall be inserted, namely :—

"(*mm*) the form of the bond to be furnished under sub-section (*2*) of section 67A;"; and

(*iv*) in clause (*o*) for the words "individual, joint stock company or other association" the word "person" shall be substituted.

Amendment of section 84 of Bom. XXVIII of 1939.

38. In section 84 of the said Act—

(*i*) after the words "for any local area," the words "or for any class of debtors in any local area", and

(*ii*) after the words "in such area," the words "or in respect of such class of debtors in such local area, as the case may be"

shall respectively be inserted.

Amendment of section 85 of Bom. XXVIII of 1939.

39. In sub-section (*1*) of section 85 of the said Act—

(*i*) after the words "for any local area" the words "or for any class of debtors in any local area", and

(*ii*) after the words "in such area" the words "or in respect of such class of debtors in such local area, as the case may be,"

shall respectively be inserted.

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Certain amendments to apply retrospectively to proceedings pending before a Board.

40. (*1*) The amendments made in the said Act by the provisions of this Act, other than sub-clauses (*a*), (*c*) and (*d*) of clause (*ii*) of section 2, clause (*ii*) of section 3, sections 8 and 10, clause (*ii*) of section 13, sections 14 and 16 and sub-section (*1*) of section 23 shall apply to proceedings for adjustment of debts pending before a Board at the date of the coming into force of this Act:

Provided that nothing contained in the amendment made by section 28 of this Act shall render invalid any alienation made before the coming into force of this Act.

(*2*) All proceedings in appeal pending before a Court at the date of the coming into force of this Act shall be disposed of as if this Act had not been passed.

Transitory provision.

41. All execution proceedings pending at any time including those pending at the date of the coming into force of this Act in the District Court or a Court of the First Class Subordinate Judge shall be transferred to the Collector under section 63 of the said Act.

STATEMENT.

In August 1943 the Government appointed a Committee to inquire into the working of the Bombay Agricultural Debtors Relief Act, 1939, with a view to ascertain the defects which obstruct the smooth working of the Act and the measures to be taken for remedying those defects and to suggest measures for simplifying the procedure of debt adjustment and to provide for a large scale and speedy composition of agricultural debts. The present Bill is intended to give effect to the recommendations of the Committee accepted by Government.

Provision is also being made to safeguard the interest of debtors who are temporarily engaged in any of the Defence Services. They are being exempted from personal cultivation of land if they had been cultivating the land personally at the commencement of the first of the two cultivating seasons immediately preceding the date of the establishment of the Board or the date of joining the Defence Service. It is also proposed to exclude their income from service for the purpose of calculating income from sources other than agriculture and manual labour under sections 2 (*6*) (*a*) (*iv*) and 2 (*6*) (*b*) (*iv*). Provision is also being made to enable such of them as cannot appear before the Board on account of war conditions to appoint agents to appear and conduct the proceedings before the Boards on their behalf.

The following notes on clauses explain the amendments contained in the Bill :—

NOTES ON CLAUSES.

Clause 2.—The amendments in paragraph (*i*) are consequential.

The amendment in paragraph (*ii*) (*b*) enables a member of a Defence Service to come within the definition of debtor if he cultivated the land personally at the commencement of the first of the two cultivating seasons immediately preceding the date of the establishment of the Board concerned or the date of joining the Defence Service, whichever is earlier. It also provides for excluding the salary of a member of a Defence Service while computing his annual income.

The other amendments contained in paragraph (*ii*) are intended to bring within the purview of the Act those who have taken to personal cultivation after 1st April 1937 but for over two cultivating seasons immediately preceding the establishment of any future Board.

Clause 3 (iii).—Section 3 saves the taxes due to Government and the local authorities and dues of co-operative societies and liabilities due under a decree or order for maintenance passed by a competent court from the operation of certain provisions of the Act. It is proposed to include in the saving clause dues to Scheduled Banks as it is not considered necessary to subject these dues to the same scrutiny as dues to other money-lenders.

Clauses 3 (ii), 10, 13, 14, 16 and 23 (1).—The changes in these clauses are necessary as the Act is to be applied to selected areas piecemeal instead of to the whole Province as originally intended.

Clause 4.—The addition has been made to provide for recruitment of legal practitioners to man the Boards.

Clauses 5 and 6.—It is intended to place the Boards directly under the control of the District Judge in order to secure proper supervision and uniform practice.

Clause 7.—The amendment is intended to expedite disposal of applications made to the Board.

Clause 8.—This reduces the period of submitting debt adjustment applications from 18 months to 6 months in relation to all future Boards, in order to expedite adjustment of debts

Clause 9.—This encourages amicable settlements.

Clause 11.—Under section 30 of the Act as it stands at present legal representatives of a deceased party may be joined at any time without the penalty of an abatement under Order 22, rule 3 or 4 of the Civil Procedure Code. The amendment is intended to put the point beyond doubt by providing that the legal representatives may be brought on the record as soon as may be.

Clause 12.—The amendments make the intention clear and do away with the discretion left in the Board to keep the debts alive.

Clause 15.—The amendment amplifies the procedure and expedites settlement proceedings in cases where suits, applications for execution and proceedings are pending in any civil or revenue court against debtors under this Act. The new section 37 provides that on the transfer of such suits etc. to the Board, the Board shall proceed as if an application were made to it under section 17. If it decides the preliminary issues under section 35 (*1*) in the negative, the suit etc. shall be retransferred to the court from which it was transferred to the Board for further disposal.

Clauses 17 and 18.—The amendment makes the meaning more explicit.

Clause 19.—The addition has been made to provide a rough and ready method to determine the principal and interest separately in cases where the decree or order of a civil court does not specify the principal and interest separately or contain material for ascertaining the principal and interest separately.

Clause 20.—Consequent on the amendment of section 3 it is considered necessary that scheduled banks should be placed in the same category as the Collector and the co-operative society in the matter of communicating the amount of debt due by the debtor to them and how much of it they are prepared to remit.

Clause 21.—Section 50 does not provide for determining the value of the property of a debtor in cases where the debtor has no property liable to secured debts. The amendment supplies this omission.

Clauses 22, 23 (2) and 24.—The amendments reduce the paying capacity of the debtor and the number of instalments of repayment of the debt in view of the present inflation in prices and the consequent rise in the value of the property. The Explanation to section 54 (*2*) (*h*) has been amplified to make it clear.

Clause 25.—The amendment regularises the practice in the matter as obtaining under the by-laws of the Bombay Provincial Co-operative Land Mortgage Bank.

Clause 26.—This is a consequential amendment.

Clause 27.—The amendment expedites execution proceedings.

Clauses 28 and 35.—The bar against the alienation of a property by a debtor is extended to the time when the application for adjustment of debts is made. This is necessary to safeguard the interests of the persons advancing money for financing crops, and to prevent exploitation of debtors by unscrupulous money-lenders in the interval between the making of the application and the passing of the award.

Clauses 29 (ii) and 32 (ii).—The amendments make it clear that lands to which section 73A of the Bombay Land Revenue Code, 1879, applies shall not be sold without the previous sanction of the Collector.

Clause 30.—The amendment permits parties residing at distant places or unable to attend for some other reason to be represented by authorised agents.

Clause 31.—This clause provides for appearance before the Board or Court on behalf of members of Defence Services who cannot appear or appoint an agent on account of war conditions.

Clause 32 (i).—The amendment reduces the number of instalments incapacity to liquidate the debts within which enables the Board to adjudicate the debtor insolvent.

The reference to the inadequacy of the paying capacity of the debtor to pay the total amount of his debts has been deleted, as being unnecessary.

Clause 33.—The amendment rectifies an obvious error.

Clause 34.—This clause is intended to safeguard the rights of minors and of persons adjudged to be of unsound mind and of persons who though not so adjudged are found on enquiry by reason of unsoundness of mind or mental infirmity to be incapable of protecting their interests.

Clause 36.—This amendment authorises loans to be advanced to debtors who are parties to any proceedings under this Act.

Clause 37.—These are consequential amendments in the rule-making section.

Clauses 38 and 39.—They harmonise the wording of sections 84 and 85 with the provisions made in section 4 (*1*) for the establishment of two kinds of Boards, one for a local area and another for any class of debtors in any local area.

Clause 40.—It is intended to give retrospective effect to certain amendments made by the Act so as to apply them to proceedings pending before a Board at the date of the coming into force of the amending Act. Proceedings in appeal pending before a Court will however be disposed of under the old law.

Clause 41.—This is a transitory provision for the transfer of execution proceedings pending in the District Court or the Court of the First Class Subordinate Judge to the Collector.

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